

AMENDED IN SENATE MAY 7, 2014  
AMENDED IN SENATE APRIL 22, 2014

**SENATE BILL**

**No. 1270**

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**Introduced by Senator Pavley**

February 21, 2014

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An act to amend Sections 607, 677, 2006, 2207, 2208, 2209, 2210, 2732.5, 2733, 2770, 2772, 2773.1, 2774, 2774.1, 2774.3, and 2774.4 of, and to add Section 2006.5 to, the Public Resources Code, relating to mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 1270, as amended, Pavley. Surface mining operations.

(1) Under existing law, the Department of Conservation, under the supervision of the Director of Conservation, is comprised of various entities, including the State Mining and Geology Board, and the work of the department is divided into divisions including the California Geological Survey and the Office of Mine Reclamation. Existing law requires the board to nominate, and the director to appoint, the State Geologist to advise the director regarding technical, scientific, and engineering issues, including the scientific quality of the products and activities of the California Geological Survey, and requires the State Geologist to meet specific qualifications.

This bill would require the board to nominate at least 2 individuals for appointment; as the State Geologist and would make ~~that individual~~ *the State Geologist* responsible for the management of the California Geological Survey. The bill would also designate the Office of Mine Reclamation as the Division of Mines, would require the director to appoint a State Mine Inspector to be responsible for the management

of the Division of Mines, and would prescribe the specific qualifications for that person.

(2) Existing law requires the owner or operator of a mining operation to forward annually to the director and the lead agency a report that provides specified information with respect to the mining operation.

This bill would require, among other changes, that *the* report ~~to~~ be submitted to the State Mine Inspector and the lead agency. The bill would additionally require the State Mine Inspector to submit to the board and the director an annual report relating to abandoned mines, as provided.

(3) The Surface Mining and Reclamation Act of 1975, administered by the board, prohibits a person, with exceptions, from conducting surface mining operations unless, among other things, a permit, as defined, is obtained from, a reclamation plan, as specified, is submitted to and approved by, and financial assurances for reclamation have been approved by, the lead agency for the operation. Existing law provides an appeals process for decisions of the lead agency in approval or denial of approval of a reclamation plan.

This bill would instead make the lead agency or, *in certain circumstances*, the State Mine ~~Inspector, in certain circumstances~~; *Inspector* responsible for reviewing and approving financial assurances in surface mining operations and would require the lead agency or the State Mine Inspector to take specified actions in seeking forfeiture of those financial assurances. The bill would also provide an appeals process for the State Mine Inspector's approval or denial of approval of financial assurances. The bill would require a portion of the reclamation plan to be certified by a registered professional geologist, geophysicist, or civil engineer and to include a schedule with time limits for completing reclamation, ~~as specified, and specified~~. *The bill* would require the lead agency or the State Mine Inspector to determine a time period for reclamation to be complete in certain circumstances. By imposing additional duties on lead agencies, this bill would impose a state-mandated local program. For purposes of the act, the bill would also revise the definition of permit.

(4) Existing law requires the lead agency to conduct an inspection of a surface mining operation within 6 months of receipt by the lead agency of the annual report described in *paragraph* (2) above. Under existing law, if the lead agency or the director determines that a surface mining operation is not in compliance, the lead agency or director is required to notify the operator of that violation.

This bill would also require the State Mine Inspector, in certain circumstances, to conduct an inspection of those operations within 6 months of receipt of the report by the State Mine Inspector and to provide notice of the inspection to the lead agency. The bill would require the notice of violation to include, among other things, specific remedial steps to be taken to correct the noncompliance and also information on the time to comply.

(5) Existing law requires the board to assume the powers and duties under the act of the lead agency if, following a public hearing, as prescribed, the board finds deficiencies in the lead agency's implementation and enforcement of the act.

This bill would require the board, in those circumstances, to assign those powers and duties to the State Mine Inspector. The bill would also authorize a lead agency to unilaterally and voluntarily relinquish its responsibilities under the act and would require the State Mine Inspector to assume those responsibilities. The bill would authorize the lead agency to resume its relinquished role if certain requirements are met.

(6) Existing law requires the board to adopt a schedule of fees to cover the department's costs of carrying out specified provisions and to impose an annual reporting fee on each mining operation, not to exceed \$4,000 annually for any single mining operation and not to be less than \$100. Existing law requires the board to adjust the fees if the director determines the resources collected were greater to or less than the department's costs.

This bill would require that an annual reporting fee, which would also be required to cover the board's costs, as provided, on each mining operation not be less than \$1,000 or more than an unspecified amount and would require the fee to be based on a cost per acre as determined by the board. The bill would require the board to adjust the fees if the State Mine Inspector determines the revenues collected were greater to or less than the department's costs.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares the following:

(a) Since its passage, the implementation of the Surface Mining and Reclamation Act of 1975 has depended on coordinated administrative efforts by local governments, the Department of Conservation, and the State Mining and Geology Board. Two of the major goals of the act are to encourage production and conservation of minerals in California, and to ensure reclamation of mined lands.

(b) The essential components of the act for each of the more than 2,000 mines in California are annual inspections, reclamation plans for mines that have ceased production, and a financial surety mechanism to pay for reclamation in the event the operator is unable or fails to do so.

(c) It is the intent of the Legislature that siting decisions for mines and the approval of reclamation plans for those mines remain with local governments.

(d) The act provides for approval procedures for financial assurances and reclamation plans that depend on active inspections, remediation of compliance shortfalls, and appropriate updates to financial assurance commitments. Based on a review of official state data, industry and government analysts agree that the goals of the act are not being achieved because of multiple failures in the internal processes of this important legislation. As examples:

(1) Twenty-five percent of mines that have closed have not begun reclamation. This includes about 100 mines in the state.

(2) Inspection rates by counties who serve as lead agencies under the act, over a multiyear period, range from 66 percent to 74 percent, inclusive, but 12 counties have inspection rates below 50 percent.

(3) Data on inspections by cities that serve as lead agencies under the act, over the same multiyear period, indicate that 22 cities have inspected all of their mines annually, 25 cities have an inspection rate below 50 percent, and 14 cities have never inspected a mine.

(4) Financial assurance documents that ensure the ability to pay for mine reclamation are not routinely updated. The adjustment rate for counties is about 27 percent, based on official data, and about 20 percent for cities.

1 (e) It is the intent of the Legislature to retain the existing  
2 structure of the act while improving the statutory relationships  
3 between state and local government entities by strengthening the  
4 interconnections between inspections, financial assurances, and  
5 reclamation plans, in order to ensure improved compliance with  
6 the provisions of this important law.

7 SEC. 2. Section 607 of the Public Resources Code is amended  
8 to read:

9 607. The work of the department shall be divided into at least  
10 the following:

- 11 (a) California Geological Survey.
- 12 (b) Division of Oil, Gas, and Geothermal Resources.
- 13 (c) Division of Land Resource Protection.
- 14 (d) Division of Mines.

15 SEC. 3. Section 677 of the Public Resources Code is amended  
16 to read:

17 677. (a) The board shall nominate at least two individuals to  
18 serve as State Geologist. The director shall appoint the State  
19 Geologist, who shall be responsible for the management of the  
20 California Geological Survey. The State Geologist shall either be  
21 registered in compliance with the Geologist and Geophysicist Act  
22 (Chapter 12.5 (commencing with Section 7800) of Division 3 of  
23 the Business and Professions Code) at least one year from the date  
24 of appointment, or the Board for Professional Engineers, Land  
25 Surveyors, and Geologists may, upon the review of academic and  
26 professional experience, grant registration. The State Geologist  
27 shall possess general knowledge of mineral resources, structural  
28 geology, seismology, engineering geology, and related disciplines  
29 in science and engineering, and the reclamation of mined lands  
30 and waters. The State Geologist shall advise the director regarding  
31 technical, scientific, and engineering issues, including the scientific  
32 quality of the products and activities of the California Geological  
33 Survey.

34 (b) A State Mine Inspector shall be appointed by the director  
35 and shall be responsible for the management of the Division of  
36 Mines. The State Mine Inspector shall either be registered in  
37 compliance with the Geologist and Geophysicist Act (Chapter 12.5  
38 (commencing with Section 7800) of Division 3 of the Business  
39 and Professions Code) or the Professional Engineers Act (Chapter  
40 7 (commencing with Section 6700) of Division 3 of the Business

1 and Professions Code) at least one year from the date of  
2 appointment, or the Board for Professional Engineers, Land  
3 Surveyors, and Geologists may, upon the review of academic and  
4 professional experience, grant registration. The State Mine  
5 Inspector shall possess general knowledge of mining, mineral  
6 resources, structural geology, seismology, engineering geology,  
7 and related disciplines in science and engineering, and the  
8 reclamation of mined lands and waters. The State Mine Inspector  
9 shall advise the director regarding technical, scientific, and  
10 engineering issues, including the scientific quality of the products  
11 and activities of the Division of Mines.

12 SEC. 4. Section 2006 of the Public Resources Code is amended  
13 to read:

14 2006. "State Geologist" means the individual holding the office  
15 created by subdivision (a) of Section 677.

16 SEC. 5. Section 2006.5 is added to the Public Resources Code,  
17 to read:

18 2006.5. "State Mine Inspector" means the individual holding  
19 the office created by subdivision (b) of Section 677.

20 SEC. 6. Section 2207 of the Public Resources Code is amended  
21 to read:

22 2207. (a) The owner or the operator of a mining operation  
23 within the state shall forward to the State Mine Inspector annually,  
24 not later than a date established by the State Mine Inspector, upon  
25 forms approved by the board from time to time, a report that  
26 identifies all of the following:

27 (1) The name, address, and telephone number of the person,  
28 company, or other owner of the mining operation.

29 (2) The name, address, and telephone number of a designated  
30 agent who resides in this state, and who will receive and accept  
31 service of all orders, notices, and processes of the lead agency,  
32 board, State Mine Inspector, or court.

33 (3) The location of the mining operation, its name, its mine  
34 number as issued by the State Mine Inspector, its section, township,  
35 range, latitude, longitude, and approximate boundaries of the  
36 mining operation marked on a United States Geological Survey  
37 7 ½-minute or 15-minute quadrangle map.

38 (4) The lead agency.

39 (5) The approval date of the mining operation's reclamation  
40 plan.

1 (6) The mining operation's status as active, idle, reclaimed, or  
2 in the process of being reclaimed.

3 (7) The commodities produced by the mine and the type of  
4 mining operation.

5 (8) Proof of annual inspection. All annual inspections conducted  
6 on or after July 1, 2015, shall be certified by a registered  
7 professional geologist, geophysicist, or civil engineer who either  
8 works for the local lead agency or the division or, if not employed  
9 by the local lead agency, has not worked for a mining operation  
10 in the jurisdiction of the local agency for at least one year.

11 (9) Proof of financial assurances.

12 (10) Ownership of the property, including government agencies,  
13 if applicable, by the assessor's parcel number, and total assessed  
14 value of the mining operation.

15 (11) The approximate permitted size of the mining operation  
16 subject to Chapter 9 (commencing with Section 2710), in acres.

17 (12) The approximate total acreage of land newly disturbed by  
18 the mining operation during the previous calendar year.

19 (13) The approximate total of disturbed acreage reclaimed during  
20 the previous calendar year.

21 (14) The approximate total unreclaimed disturbed acreage  
22 remaining as of the end of the calendar year.

23 (15) The total production for each mineral commodity produced  
24 during the previous year.

25 (16) A copy of any approved reclamation plan and any  
26 amendments or conditions of approval to any existing reclamation  
27 plan approved by the lead agency.

28 (b) (1) Every year, not later than the date established by the  
29 State Mine Inspector, the person submitting the report pursuant to  
30 subdivision (a) shall forward to the lead agency, upon forms  
31 furnished by the board, a report that provides all of the information  
32 specified in subdivision (a).

33 (2) The owner or operator of a mining operation shall allow  
34 access to the property to any governmental agency or the agent of  
35 any company providing financial assurances in connection with  
36 the reclamation plan, in order that the reclamation can be carried  
37 out by the entity or company, in accordance with the provisions  
38 of the reclamation plan.

39 (c) Subsequent reports shall include only changes in the  
40 information submitted for the items described in subdivision (a),

1 except that, instead of the approved reclamation plan, the reports  
2 shall include any reclamation plan amendments approved during  
3 the previous year. The reports shall state whether review of a  
4 reclamation plan, financial assurances, or an interim management  
5 plan is pending under subdivision (b), (c), (d), or (h) of Section  
6 2770, or whether an appeal before the board or lead agency  
7 governing body is pending under subdivision (e) or (h) of Section  
8 2770. The State Mine Inspector shall notify the person submitting  
9 the report and the owner's designated agent in writing that the  
10 report and the fee required pursuant to subdivision (d) have been  
11 received, specify the mining operation's mine number if one has  
12 not been issued by the State Mine Inspector, and notify the person  
13 and agent of any deficiencies in the report within 90 days of receipt.  
14 That person or agent shall have 30 days from receipt of the  
15 notification to correct the noted deficiencies and forward the  
16 revised reports to the State Mine Inspector and the lead agency.  
17 Any person who fails to comply with this section, or knowingly  
18 provides incorrect or false information in reports required by this  
19 section, may be subject to an administrative penalty as provided  
20 in subdivision (c) of Section 2774.1.

21 (d) (1) The board shall impose, by regulation, pursuant to  
22 paragraph (2), an annual reporting fee on, and method for collecting  
23 annual fees from, each active or idle mining operation. The  
24 minimum fee for any single mining operation may not be less than  
25 one thousand dollars (\$1,000) annually, as adjusted for the cost of  
26 living as measured by the California Consumer Price Index for  
27 All Urban Consumers, calendar year averages, using the percentage  
28 change in the previous year, beginning with the 2014–15 fiscal  
29 year and annually thereafter.

30 (2) (A) The board shall adopt, by regulation, a schedule of fees  
31 authorized under paragraph (1) to cover the department's and  
32 board's costs in carrying out this section and Chapter 9  
33 (commencing with Section 2710), as reflected in the Governor's  
34 Budget, and may adopt those regulations as emergency regulations.  
35 The board's costs shall be reflected separately in a format approved  
36 by the Department of Finance and shall be displayed in the annual  
37 budget proposed by the Governor. In establishing the schedule of  
38 fees to be paid by each active and idle mining operation, the board  
39 shall consider and establish a cost per acre on an equitable basis  
40 reflecting the size and type of operation, the acreage disturbed and



1 undisturbed by mining activities, the acreage subject to the  
2 reclamation plan, and other factors addressed by the approved  
3 reclamation plan. The fee for each active and idle mining operation  
4 shall not exceed \_\_\_\_ dollars (\$\_\_\_\_).

5 (B) Regulations adopted pursuant to this subdivision shall be  
6 adopted by the board in accordance with Chapter 3.5 (commencing  
7 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
8 Government Code. The adoption of any emergency regulations  
9 pursuant to this subdivision shall be considered necessary to  
10 address an emergency and shall be considered by the Office of  
11 Administrative Law to be necessary for the immediate preservation  
12 of the public peace, health, safety, and general welfare.

13 (3) The total revenue generated by the reporting fees may not  
14 exceed, and may be less than, the amount of \_\_\_\_ dollars (\$\_\_\_\_),  
15 as adjusted for the cost of living as measured by the California  
16 Consumer Price Index for All Urban Consumers, calendar year  
17 averages, using the percentage change in the previous year,  
18 beginning with the 2005–06 fiscal year and annually thereafter  
19 and shall be based on a cost per acre, subject to the approved  
20 reclamation plan, as determined by the board pursuant to paragraph  
21 (2). If the State Mine Inspector determines that the revenue  
22 collected during the preceding fiscal year was greater or less than  
23 the cost to operate the program, the board shall adjust the fees to  
24 compensate for the overcollection or undercollection of revenues.

25 (4) (A) The reporting fees established pursuant to this  
26 subdivision shall be deposited in the Mine Reclamation Account,  
27 which is hereby created. Any fees, penalties, interest, fines, or  
28 charges collected by the State Mine Inspector or board pursuant  
29 to this chapter or Chapter 9 (commencing with Section 2710) shall  
30 be deposited in the Mine Reclamation Account. The moneys in  
31 the account shall be available to the department and board, upon  
32 appropriation by the Legislature, for the purpose of carrying out  
33 this section and complying with Chapter 9 (commencing with  
34 Section 2710), which includes, but is not limited to, classification  
35 and designation of areas with mineral resources of statewide or  
36 regional significance, reclamation plan and financial assurance  
37 review, mine inspection, and enforcement.

38 (B) On or before January 1, 2018, and each year thereafter, the  
39 State Mine Inspector shall submit to the board and the director a

1 report on the activities of the Abandoned Mines Land Unit. This  
2 report shall include, but is not limited to, all of the following:

3 (i) The number and location of known abandoned mines  
4 identified along with any associated features and supporting  
5 documentation.

6 (ii) Type of mine site and minerals or materials mined.

7 (iii) Summary of assessment and overall mitigation activities  
8 and mitigation activities per site performed to date.

9 (iv) Prioritized assessment of sites that present an imminent  
10 danger to public health, safety, and welfare, and to the environment.

11 (v) Available funding and efforts to obtain funding to mitigate  
12 high-risk sites.

13 (vi) Planned activities for upcoming year.

14 (C) (i) In addition to reporting fees, the board shall collect five  
15 dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of  
16 silver mined within the state and shall deposit the fees collected  
17 in the Abandoned Mine Reclamation and Minerals Fund  
18 Subaccount, which is hereby created in the Mine Reclamation  
19 Account. The department may expend the moneys in the  
20 subaccount, upon appropriation by the Legislature, for only the  
21 purposes of Section 2796.5 and as authorized herein for the  
22 remediation of abandoned mines.

23 (ii) Notwithstanding subdivision (j) of Section 2796.5, fees  
24 collected pursuant to clause (i) may also be used to remediate  
25 features of historic abandoned mines and lands that they impact.  
26 For the purposes of this section, historic abandoned mines are  
27 mines for which operations have been conducted before January  
28 1, 1976, and include, but are not limited to, historic gold and silver  
29 mines.

30 (5) In case of late payment of the reporting fee, a penalty of not  
31 less than one hundred dollars (\$100) or 10 percent of the amount  
32 due, whichever is greater, plus interest at the rate of 1 ½ percent  
33 per month, computed from the delinquent date of the assessment  
34 until and including the date of payment, shall be assessed. New  
35 mining operations that have not submitted a report shall submit a  
36 report prior to commencement of operations. The new operation  
37 shall submit its fee according to the reasonable fee schedule  
38 adopted by the board, and the month that the report is received  
39 shall become that operation's anniversary month.

1 (e) The lead agency, or the board or State Mine Inspector when  
2 acting as the lead agency pursuant to Section 2774.4, may impose  
3 a fee upon each mining operation to cover the reasonable costs  
4 incurred in implementing this chapter and Chapter 9 (commencing  
5 with Section 2710).

6 (f) For purposes of this section, “mining operation” means a  
7 mining operation of any kind or character whatsoever in this state,  
8 including, but not limited to, a mining operation that is classified  
9 as a “surface mining operation” as defined in Section 2735, unless  
10 excepted by Section 2714. For the purposes of fee collections only,  
11 “mining operation” may include one or more mines operated by  
12 a single operator or mining company on one or more sites, if the  
13 total annual combined mineral production for all sites is less than  
14 100 troy ounces for precious metals, if precious metals are the  
15 primary mineral commodity produced, or less than 100,000 short  
16 tons if the primary mineral commodity produced is not precious  
17 metals.

18 (g) Any information in reports submitted pursuant to subdivision  
19 (a) that includes or otherwise indicates the total mineral production,  
20 reserves, or rate of depletion of any mining operation may not be  
21 disclosed to any member of the public, as defined in subdivision  
22 (b) of Section 6252 of the Government Code. Other portions of  
23 the reports are public records unless excepted by statute. Statistical  
24 bulletins based on these reports and published under Section 2205  
25 shall be compiled to show, for the state as a whole and separately  
26 for each lead agency, the total of each mineral produced therein.  
27 In order not to disclose the production, reserves, or rate of depletion  
28 from any identifiable mining operation, no production figure shall  
29 be published or otherwise disclosed unless that figure is the  
30 aggregated production of not less than three mining operations. If  
31 the production figure for any lead agency would disclose the  
32 production, reserves, or rate of depletion of less than three mining  
33 operations or otherwise permit the reasonable inference of the  
34 production, reserves, or rate of depletion of any identifiable mining  
35 operation, that figure shall be combined with the same figure of  
36 not less than two other lead agencies without regard to the location  
37 of the lead agencies. The bulletin shall be published annually by  
38 June 30 or as soon thereafter as practicable.

39 (h) The approval of a form by the board pursuant to this section  
40 is not the adoption of a regulation for purposes of Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and is not subject to that chapter.

SEC. 7. Section 2208 of the Public Resources Code is amended to read:

2208. The State Mine Inspector, State Geologist, director, or a qualified assistant may at any time enter or examine any and all mines, quarries, wells, mills, reduction works, refining works, and other mineral properties or working plants in this state in order to gather data to comply with the provisions of this chapter.

SEC. 8. Section 2209 of the Public Resources Code is amended to read:

2209. The director or the State Geologist may fix a price upon and dispose of to the public all publications of the division, including reports, bulletins, maps, registers, or other publications. The price shall approximate the cost of publication and distribution. The director or the State Geologist may also furnish the publications of the division to public libraries without cost and may exchange publications with geological surveys, scientific societies, and other like bodies.

SEC. 9. Section 2210 of the Public Resources Code is amended to read:

2210. All money received by the division and the State Geologist from sales of publications issued by the division shall be deposited at least once each month in the State Treasury to the credit of the General Fund.

SEC. 10. Section 2732.5 of the Public Resources Code is amended to read:

2732.5. "Permit" means a land use authorization from, or approval by, a lead agency, the absence of which would preclude surface mining operations.

SEC. 11. Section 2733 of the Public Resources Code is amended to read:

2733. "Reclamation" means the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed, to a usable condition that is readily adaptable for alternate land uses, and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands;

1 may require backfilling, grading, resoiling, revegetation, soil  
2 compaction, stabilization, or other measures; and shall be certified  
3 by a registered professional geologist, geophysicist, or civil  
4 engineer.

5 SEC. 12. Section 2770 of the Public Resources Code is  
6 amended to read:

7 2770. (a) Except as provided in this section, a person shall not  
8 conduct surface mining operations unless a permit is obtained  
9 from, a ~~current~~ reclamation plan has been submitted to and  
10 approved by, and ~~current~~ financial assurances for reclamation have  
11 been approved by, the lead agency for the operation *pursuant to*  
12 *this article*. Where the State Mine Inspector has assumed the lead  
13 agency's authority pursuant to Section 2774.4, surface mining  
14 operations shall not be conducted unless, in addition to having a  
15 permit approved by the lead agency, the person has a current  
16 reclamation plan and financial assurances for reclamation approved  
17 by the State Mine Inspector.

18 (b) A person with an existing surface mining operation who has  
19 vested rights pursuant to Section 2776 and who does not have an  
20 approved reclamation plan shall submit a reclamation plan to the  
21 lead agency not later than March 31, 1988. If a reclamation plan  
22 application is not on file by March 31, 1988, the continuation of  
23 the surface mining operation is prohibited until a reclamation plan  
24 is submitted to the lead agency. For purposes of this subdivision,  
25 a reclamation plan may consist of all or the appropriate sections  
26 of any plans or written agreements previously approved by the  
27 lead agency or another agency, together with any additional  
28 documents needed to substantially meet the requirements of  
29 Sections 2772 and 2773 and the lead agency surface mining  
30 ordinance adopted pursuant to subdivision (a) of Section 2774,  
31 provided that all documents which together were proposed to serve  
32 as the reclamation plan are submitted for approval to the lead  
33 agency in accordance with this chapter.

34 (c) The lead agency shall administratively review, at least  
35 annually, and make any changes, to ensure financial assurances  
36 for all surface mining operations within its jurisdiction are in  
37 accordance with subdivision (d). If the State Mine Inspector has  
38 assumed the lead agency's authority pursuant to Section 2774.4,  
39 a person operating a surface mining operation within ~~such~~ *the* lead  
40 agency's jurisdiction shall submit financial assurances for

1 reclamation to the State Mine Inspector within 60 days after the  
2 State Mine Inspector's assumption for review and approval in  
3 accordance with subdivision (d). The State Mine Inspector shall  
4 administratively review, at least annually, and make any changes,  
5 to ensure financial assurances for all mining operations for which  
6 the State Mine Inspector has authority pursuant to Section 2774.4  
7 are in accordance with subdivision (d). The review of existing  
8 financial assurances shall not be considered a project for purposes  
9 of Division 13 (commencing with Section 21000).

10 (d) The review of a reclamation plan submitted pursuant to  
11 subdivision (b) or the review of financial assurances pursuant to  
12 subdivision (c) is limited to whether the plan or the financial  
13 assurances substantially meet the applicable requirements of  
14 Sections 2772, 2773, and 2773.1, and the lead agency surface  
15 mining ordinance adopted pursuant to subdivision (a) of Section  
16 2774, but, in any event, the lead agency or the State Mine Inspector,  
17 as the case may be, shall require that financial assurances for  
18 reclamation be sufficient to perform reclamation of lands remaining  
19 disturbed. For purposes of this chapter, reclamation plans or  
20 financial assurances determined to substantially meet these  
21 requirements shall be approved. Reclamation plans or financial  
22 assurances determined not to substantially meet these requirements  
23 shall be returned to the operator within 60 days. The operator shall  
24 have 60 days to revise the plan or financial assurances to address  
25 identified deficiencies, at which time the revised plan or financial  
26 assurances shall be returned to the lead agency, or the State Mine  
27 Inspector, as the case may be, for review and approval, or the  
28 revised reclamation plan shall be returned to the director for review  
29 and approval. Except as specified in subdivision (e) or (i), the  
30 continuation of the surface mining operation is prohibited until a  
31 reclamation plan and financial assurances for reclamation are  
32 approved.

33 (e) (1) A person who, based on the evidence of the record,  
34 claims that a lead agency has (A) failed to act according to due  
35 process or has relied on considerations not related to the specific  
36 applicable requirements of Sections 2772, 2773, and 2773.1, and  
37 the lead agency surface mining ordinance adopted pursuant to  
38 subdivision (a) of Section 2774, in reaching a decision to approve  
39 or deny approval of a reclamation plan, (B) failed to act within a  
40 reasonable time of receipt of a completed application, or (C) failed

1 to review and approve reclamation plans as required by  
2 subdivisions (c) and (d), may appeal that action or inaction to the  
3 board.

4 (2) A person who, based on the evidence of the record, claims  
5 that the State Mine Inspector has either (A) failed to act according  
6 to due process or has relied on considerations not related to the  
7 specific applicable requirements of Sections 2772, 2773, and  
8 2773.1, in reaching a decision to approve or deny approval of  
9 financial assurances, or (B) failed to review and approve financial  
10 assurances as required by subdivisions (c) and (d), may appeal that  
11 action or inaction to the board.

12 (f) The board may decline to hear an appeal if it determines that  
13 the appeal raises no substantial issues related to the lead agency's  
14 or the State Mine Inspector's review pursuant to this section.

15 (g) Appeals that the board does not decline to hear shall be  
16 scheduled and heard at a public hearing within 45 days of the filing  
17 of the appeal, or a longer period as may be mutually agreed upon  
18 by the board and the person filing the appeal. In hearing an appeal,  
19 the board shall only determine whether the reclamation plan or the  
20 financial assurances substantially meet the applicable requirements  
21 of Sections 2772, 2773, and 2773.1, and the lead agency surface  
22 mining ordinance adopted pursuant to subdivision (a) of Section  
23 2774. A reclamation plan or financial assurances determined to  
24 meet these requirements shall be approved. A reclamation plan or  
25 financial assurances determined not to meet these requirements  
26 shall be returned to the operator with a notice of deficiencies, who  
27 shall be granted, once only, a period of 30 days, or a longer period  
28 mutually agreed upon by the operator and the board, to correct the  
29 noted deficiencies and submit the revised reclamation plan or  
30 financial assurances to the lead agency or the State Mine Inspector,  
31 as the case may be, for review and approval.

32 (h) (1) Within 90 days of a surface mining operation becoming  
33 idle, as defined in Section 2727.1, the operator shall submit to the  
34 lead agency for review and approval, an interim management plan.  
35 The review and approval of an interim management plan shall not  
36 be considered a project for purposes of Division 13 (commencing  
37 with Section 21000). The approved interim management plan shall  
38 be considered an amendment to the surface mining operation's  
39 approved reclamation plan, for purposes of this chapter. The  
40 interim management plan shall provide measures the operator will

1 implement to maintain the site in compliance with this chapter,  
2 including, but not limited to, all permit conditions.

3 (2) The interim management plan may remain in effect for a  
4 period not to exceed five years, at which time the lead agency shall  
5 do one of the following:

6 (A) Renew the interim management plan for an additional period  
7 not to exceed five years, which may be renewed for one additional  
8 five-year renewal period at the expiration of the first five-year  
9 renewal period, if the lead agency finds that the surface mining  
10 operator has complied fully with the interim management plan.

11 (B) Require the surface mining operator to commence  
12 reclamation in accordance with its approved reclamation plan.

13 (3) The financial assurances required by Section 2773.1 shall  
14 remain in effect during the period that the surface mining operation  
15 is idle. If the surface mining operation is still idle after the  
16 expiration of its interim management plan, the surface mining  
17 operation shall commence reclamation in accordance with its  
18 approved reclamation plan.

19 (4) Within 60 days of the receipt of the interim management  
20 plan, or a longer period mutually agreed upon by the lead agency  
21 and the operator, the lead agency shall review and approve the  
22 plan in accordance with its ordinance adopted pursuant to  
23 subdivision (a) of Section 2774, so long as the plan satisfies the  
24 requirements of this subdivision, and so notify the operator in  
25 writing. Otherwise, the lead agency shall notify the operator in  
26 writing of any deficiencies in the plan. The operator shall have 30  
27 days, or a longer period mutually agreed upon by the operator and  
28 the lead agency, to submit a revised plan.

29 (5) The lead agency shall approve or deny approval of the  
30 revised interim management plan within 60 days of receipt. If the  
31 lead agency denies approval of the revised interim management  
32 plan, the operator may appeal that action to the lead agency's  
33 governing body, which shall schedule a public hearing within 45  
34 days of the filing of the appeal, or a longer period mutually agreed  
35 upon by the operator and the governing body.

36 (6) Unless review of an interim management plan is pending  
37 before the lead agency, or an appeal is pending before the lead  
38 agency's governing body, a surface mining operation that remains  
39 idle for over one year after becoming idle as defined in Section  
40 2727.1 without obtaining approval of an interim management plan



1 shall be considered abandoned and the operator shall commence  
2 and complete reclamation in accordance with the approved  
3 reclamation plan.

4 (i) An enforcement action that may be brought against a surface  
5 mining operation for operating without an approved reclamation  
6 plan, financial assurance, or interim management plan shall be  
7 held in abeyance pending review pursuant to subdivision (b), (c),  
8 (d), or (h), or the resolution of an appeal filed with the board  
9 pursuant to subdivision (e), or with a lead agency governing body  
10 pursuant to subdivision (h).

11 SEC. 13. Section 2772 of the Public Resources Code is  
12 amended to read:

13 2772. (a) The reclamation plan shall be filed with the lead  
14 agency, on a form developed by the board, with provisions for  
15 additional information provided at the discretion of the lead agency,  
16 by any person who owns, leases, or otherwise controls or operates  
17 on all, or any portion, of any mined lands, and who plans to conduct  
18 surface mining operations on the lands.

19 (b) All documentation for the reclamation plan shall be  
20 submitted by the lead agency to the department at one time.

21 (c) The reclamation plan shall include all of the following  
22 information and documents:

23 (1) The name and address of the surface mining operator and  
24 the names and addresses of any persons designated by the operator  
25 as an agent for the service of process.

26 (2) The anticipated quantity and type of minerals for which the  
27 surface mining operation is to be conducted.

28 (3) The proposed dates for the initiation and termination of  
29 surface mining operation.

30 (4) The maximum anticipated depth of the surface mining  
31 operation.

32 (5) The size and legal description of the lands that will be  
33 affected by the surface mining operation, a map that includes the  
34 boundaries and topographic details of the lands, a description of  
35 the general geology of the area, a detailed description of the  
36 geology of the area in which surface mining is to be conducted,  
37 the location of all streams, roads, railroads, and utility facilities  
38 within, or adjacent to, the lands, the location of all proposed access  
39 roads to be constructed in conducting the surface mining operation,

1 and the names and addresses of the owners of all surface interests  
2 and mineral interests in the lands.

3 (6) A description of, and a plan for, the type of surface mining  
4 to be employed, and a time schedule that will provide for the  
5 completion of surface mining on each segment of the mined lands  
6 so that reclamation can be initiated at the earliest possible time on  
7 those portions of the mined lands that will not be subject to further  
8 disturbance by the surface mining operation.

9 (7) A description of the proposed use or potential uses of the  
10 mined lands after reclamation and evidence that all owners of a  
11 possessory interest in the land have been notified of the proposed  
12 use or potential uses.

13 (8) A description of the manner in which reclamation, adequate  
14 for the proposed use or potential uses, will be accomplished, as  
15 certified by a registered professional geologist, geophysicist, or  
16 civil engineer, pursuant to Section 2733, including both of the  
17 following:

18 (A) A description of the manner in which contaminants will be  
19 controlled, and mining waste will be disposed.

20 (B) A description of the manner in which affected streambed  
21 channels and streambanks will be rehabilitated to a condition  
22 minimizing erosion and sedimentation will occur.

23 (9) An assessment of the effect of implementation of the  
24 reclamation plan on future mining in the area.

25 (10) A statement that the person submitting the reclamation  
26 plan accepts responsibility for reclaiming the mined lands in  
27 accordance with the reclamation plan.

28 (11) A schedule with time limits, updated annually, for  
29 completing reclamation in accordance with the reclamation plan  
30 and the then-current condition of the mining site.

31 (12) Any other information that the lead agency may require  
32 by ordinance.

33 (d) An item of information or a document required pursuant to  
34 subdivision (c) that has already been prepared as part of a permit  
35 application for the surface mining operation, or as part of an  
36 environmental document prepared for the project pursuant to  
37 Division 13 (commencing with Section 21000), may be included  
38 in the reclamation plan by reference, if that item of information  
39 or that document is attached to the reclamation plan when the lead  
40 agency submits the reclamation plan to the director for review. To

1 the extent that the information or document referenced in the  
2 reclamation plan is used to meet the requirements of subdivision  
3 (c), the information or document shall become part of the  
4 reclamation plan and shall be subject to all other requirements of  
5 this article.

6 (e) Nothing in this section is intended to limit or expand the  
7 department's authority or responsibility to review a document in  
8 accordance with Division 13 (commencing with Section 21000).

9 SEC. 14. Section 2773.1 of the Public Resources Code is  
10 amended to read:

11 2773.1. (a) Financial assurances, based on the most recent  
12 inspection by the lead agency or the State Mine Inspector, as the  
13 case may be, shall be required of each surface mining operation  
14 to ensure reclamation is performed in accordance with the surface  
15 mining operation's approved reclamation plan, as follows:

16 (1) Financial assurances may take the form of surety bonds  
17 executed by an admitted surety insurer, as defined in subdivision  
18 (a) of Section 995.120 of the Code of Civil Procedure, irrevocable  
19 letters of credit, trust funds, or other forms of financial assurances  
20 specified by the board pursuant to subdivision (e), that the lead  
21 agency or the State Mine Inspector, as the case may be, reasonably  
22 determines are adequate to perform reclamation in accordance  
23 with the surface mining operation's approved reclamation plan.

24 (2) The financial assurances shall remain in effect for the  
25 duration of the surface mining operation and any additional period  
26 until reclamation is completed.

27 (3) (A) The amount of financial assurances required of a surface  
28 mining operation for any one year shall be adjusted annually by  
29 the lead agency or the State Mine Inspector, as the case may be,  
30 to account for new lands disturbed by surface mining operations,  
31 inflation, and reclamation of lands accomplished in accordance  
32 with the approved reclamation plan.

33 (B) The annual adjustment of financial assurances is not subject  
34 to the procedures specified in paragraph (3) of subdivision (d) of  
35 Section 2774 unless made in response to an amendment to an  
36 existing reclamation plan.

37 (4) The financial assurances shall be made payable to the lead  
38 agency and the department. Financial assurances that were  
39 approved by the lead agency prior to January 1, 1993, and were  
40 made payable to the State Geologist shall be considered payable

1 to the department for purposes of this chapter. However, if a surface  
2 mining operation has received approval of its financial assurances  
3 from a public agency other than the lead agency, the lead agency  
4 or the State Mine Inspector, as the case may be, shall deem those  
5 financial assurances adequate for purposes of this section, or shall  
6 credit them toward fulfillment of the financial assurances required  
7 by this section, if they are made payable to the public agency, the  
8 lead agency, and the department and otherwise meet the  
9 requirements of this section. In any event, if a lead agency and one  
10 or more public agencies exercise jurisdiction over a surface mining  
11 operation, the total amount of financial assurances required by the  
12 lead agency or the State Mine Inspector, as the case may be, and  
13 the public agencies for any one year shall not exceed that amount  
14 that is necessary to perform reclamation of lands remaining  
15 disturbed. For purposes of this paragraph, a “public agency” may  
16 include a federal agency but does not include the State Mine  
17 Inspector.

18 (b) If the lead agency or the board, following a public hearing,  
19 determines that the operator is financially incapable of performing  
20 reclamation in accordance with its approved reclamation plan, or  
21 has abandoned its surface mining operation without commencing  
22 reclamation, either the lead agency or the State Mine Inspector  
23 shall do all of the following:

24 (1) Notify the operator by personal service or certified mail that  
25 the lead agency or the State Mine Inspector intends to take  
26 appropriate action to forfeit the financial assurances and specify  
27 the reasons for so doing.

28 (2) (A) Allow the operator 60 days to commence or cause the  
29 commencement of reclamation in accordance with its approved  
30 reclamation plan and require that reclamation be completed within  
31 the time limits specified in the approved reclamation plan or some  
32 other time period mutually agreed upon by the lead agency or the  
33 State Mine Inspector and the operator.

34 (B) If no time period is specified in the reclamation plan, or if  
35 the time period specified is determined by the lead agency or the  
36 State Mine Inspector to be inappropriate for the condition of the  
37 site, the lead agency or the State Mine Inspector shall determine a  
38 time period for reclamation to be completed if an agreement for  
39 such a time period cannot be reached between the lead agency or  
40 the State Mine Inspector and the operator.

1 (3) Proceed to take appropriate action to require forfeiture of  
2 the financial assurances if the operator does not substantially  
3 comply with paragraph (2).

4 (4) Use the proceeds from the forfeited financial assurances to  
5 conduct and complete reclamation in accordance with the approved  
6 reclamation plan. In no event shall the financial assurances be used  
7 for any other purpose. The operator is responsible for the costs of  
8 conducting and completing reclamation in accordance with the  
9 approved reclamation plan that are in excess of the proceeds from  
10 the forfeited financial assurances.

11 (c) Financial assurances shall no longer be required of a surface  
12 mining operation, and shall be released, upon written notification  
13 by the lead agency, with the written concurrence of the State Mine  
14 Inspector, which shall be forwarded to the operator, that  
15 reclamation has been completed in accordance with the approved  
16 reclamation plan. If a mining operation is sold or ownership is  
17 transferred to another person, the existing financial assurances  
18 shall remain in force and shall not be released by the lead agency  
19 or the State Mine Inspector until new financial assurances are  
20 secured from the new owner and have been approved by the lead  
21 agency or the State Mine Inspector, as the case may be, in  
22 accordance with Section 2770.

23 (d) (1) The lead agency shall have primary responsibility to  
24 seek forfeiture of financial assurances and to reclaim mine sites  
25 under subdivision (b). However, in cases where the board is not  
26 the lead agency pursuant to Section 2774.4, the State Mine  
27 Inspector may act to seek forfeiture of financial assurances and  
28 reclaim mine sites pursuant to subdivision (b) only if both of the  
29 following occurs:

30 (A) The financial incapability of the operator or the  
31 abandonment of the mining operation has come to the attention of  
32 the State Mine Inspector.

33 (B) The lead agency has been notified in writing by the State  
34 Mine Inspector of the financial incapability of the operator or the  
35 abandonment of the mining operation for at least 15 days, and has  
36 not taken appropriate measures to seek forfeiture of the financial  
37 assurances and reclaim the mine site; and one of the following has  
38 occurred:

39 (i) The lead agency has been notified in writing by the State  
40 Mine Inspector that failure to take appropriate measures to seek

1 forfeiture of the financial assurances or to reclaim the mine site  
2 shall result in actions being taken against the lead agency under  
3 Section 2774.4.

4 (ii) The State Mine Inspector determines that there is a violation  
5 that amounts to an imminent and substantial endangerment to the  
6 public health, safety, or to the environment.

7 (iii) The lead agency notifies the State Mine Inspector in writing  
8 that its good faith attempts to seek forfeiture of the financial  
9 assurances have not been successful.

10 (2) The State Mine Inspector, in seeking forfeiture of financial  
11 assurances and reclaiming mine sites, shall do all of the following:

12 (A) Notify the operator by personal service or certified mail  
13 that the State Mine Inspector intends to take appropriate action to  
14 forfeit the financial assurances and specify the reasons for so doing.

15 (B) (i) Allow the operator 60 days to commence or cause the  
16 commencement of reclamation in accordance with its approved  
17 reclamation plan and require that reclamation be completed within  
18 the time limits specified in the approved reclamation plan or some  
19 other time period mutually agreed upon by the State Mine Inspector  
20 and the operator.

21 (ii) If no time period is specified in the reclamation plan, or if  
22 the time period specified is determined by the State Mine Inspector  
23 to be inappropriate for the condition of the site, the State Mine  
24 Inspector shall determine a time period for reclamation to be  
25 completed if an agreement for such a time period cannot be reached  
26 between the State Mine Inspector and the operator pursuant to  
27 clause (i).

28 (C) Proceed to take appropriate action to require forfeiture of  
29 the financial assurances if the operator does not substantially  
30 comply with subparagraph (B).

31 (D) Use the proceeds from the forfeited financial assurances to  
32 conduct and complete reclamation in accordance with the approved  
33 reclamation plan. In no event shall the financial assurances be used  
34 for any other purpose. The operator shall be responsible for the  
35 costs of conducting and completing reclamation in accordance  
36 with the approved reclamation plan that are in excess of the  
37 proceeds from the forfeited financial assurances.

38 (e) The board may adopt regulations specifying financial  
39 assurance mechanisms other than surety bonds, irrevocable letters  
40 of credit, and trust funds, that the board determines are reasonably

1 available and adequate to ensure reclamation pursuant to this  
2 chapter, but these mechanisms may not include financial tests, or  
3 surety bonds executed by one or more personal sureties. These  
4 mechanisms may include reclamation bond pool programs.

5 (f) The board shall adopt, and update as required, guidelines to  
6 implement this section. The guidelines are exempt from the  
7 requirements of Chapter 3.5 (commencing with Section 11340) of  
8 Part 1 of Division 3 of Title 2 of the Government Code, and are  
9 not subject to review by the Office of Administrative Law.

10 SEC. 15. Section 2774 of the Public Resources Code is  
11 amended to read:

12 2774. (a) Every lead agency shall adopt ordinances in  
13 accordance with state policy that establish procedures for the  
14 review and approval of reclamation plans and financial assurances,  
15 and the issuance of a permit to conduct surface mining operations,  
16 as well as receipt of financial assurances approved by the State  
17 Mine Inspector when authorized pursuant to Section 2774.4, except  
18 that any lead agency without an active surface mining operation  
19 in its jurisdiction may defer adopting an implementing ordinance  
20 until the filing of a permit application. The ordinances shall  
21 establish procedures requiring at least one public hearing and shall  
22 be periodically reviewed by the lead agency and revised, as  
23 necessary, with notice to the board of any changes, to ensure that  
24 the ordinances continue to be in accordance with state policy.

25 (b) The lead agency shall conduct an inspection of a surface  
26 mining operation within six months of receipt by the lead agency  
27 of the surface mining operation's report submitted pursuant to  
28 Section 2207, solely to determine whether the surface mining  
29 operation is in compliance with this chapter. In no event shall the  
30 lead agency inspect a surface mining operation less than once in  
31 any calendar year. The lead agency shall cause any inspection to  
32 be conducted by a state licensed geologist, or state licensed civil  
33 engineer, who is experienced in land reclamation and who has not  
34 been employed by a surface mining operation within the  
35 jurisdiction of the lead agency in any capacity during the previous  
36 12 months. If a lead agency operates a surface mine, the inspector  
37 shall not have been an employee of the lead agency in any capacity  
38 during the previous 12 months. All inspections shall be conducted  
39 using a form developed by the department and approved by the  
40 board that shall include the professional licensing and disciplinary

1 information of the person who conducted the inspection. The  
2 operator shall be solely responsible for the reasonable cost of the  
3 inspection. The lead agency shall notify the State Mine Inspector  
4 within 30 days of the date of completion of the inspection that the  
5 inspection has been conducted. The notice shall contain a statement  
6 regarding the surface mining operation's compliance with this  
7 chapter, shall include a copy of the completed inspection form,  
8 and shall specify which aspects of the surface mining operations,  
9 if any, are inconsistent with this chapter. If the surface mining  
10 operation has a review of its reclamation plan, financial assurances,  
11 or an interim management plan pending under subdivision (b), (c),  
12 (d), or (h) of Section 2770, or an appeal pending before the board  
13 or lead agency governing body under subdivision (e) or (h) of  
14 Section 2770, the notice shall so indicate. The lead agency shall  
15 forward to the operator a copy of the notice, a copy of the  
16 completed inspection form, and any supporting documentation,  
17 including, but not limited to, any inspection report prepared by the  
18 geologist or civil engineer who conducted the inspection. A lead  
19 agency's failure to comply with the requirements of this section  
20 shall be cause for action pursuant to Section 2774.4.

21 (c) Where, pursuant to Section 2774.4, the State Mine Inspector  
22 has assumed a lead agency's authority, inspections shall be carried  
23 out in accordance with subdivision (b). The operator shall be solely  
24 responsible for the reasonable cost of the inspection. The State  
25 Mine Inspector shall notify the lead agency within 30 days of the  
26 date of completion of the inspection that the inspection has been  
27 conducted. The notice shall contain a statement regarding the  
28 surface mining operation's compliance with this chapter, shall  
29 include a copy of the completed inspection form, and shall specify  
30 which aspects of the surface mining operations, if any, are  
31 inconsistent with this chapter. If the surface mining operation has  
32 a review of its reclamation plan, financial assurances, or an interim  
33 management plan pending under subdivision (b), (c), (d), or (h)  
34 of Section 2770, or an appeal pending before the board or lead  
35 agency governing body under subdivision (e) or (h) of Section  
36 2770, the notice shall so indicate. The State Mine Inspector shall  
37 forward to the operator a copy of the notice, a copy of the  
38 completed inspection form, and any supporting documentation,  
39 including, but not limited to, any inspection report prepared by the  
40 geologist or civil engineer who conducted the inspection.



1 (d) Before approving a surface mining operation's reclamation  
2 plan, financial assurances, including existing financial assurances  
3 reviewed by the lead agency pursuant to subdivision (c) of Section  
4 2770, or any plan amendments, the lead agency shall submit the  
5 plan, assurances, or amendments to the State Mine Inspector for  
6 review. All documentation for that submission shall be submitted  
7 to the State Mine Inspector at one time. When the lead agency  
8 submits a reclamation plan or plan amendments to the State Mine  
9 Inspector for review, the lead agency shall also submit to the State  
10 Mine Inspector, for use in reviewing the reclamation plan or plan  
11 amendments, information from any related document prepared,  
12 adopted, or certified pursuant to Division 13 (commencing with  
13 Section 21000), and shall submit any other pertinent information.  
14 The lead agency shall certify in writing to the State Mine Inspector  
15 that the reclamation plan is complete and in compliance with the  
16 applicable requirements of this chapter and Article 1 (commencing  
17 with Section 3500) of Chapter 8 of Division 2 of Title 14 of the  
18 California Code of Regulations and the lead agency's mining  
19 ordinance in effect at the time that the reclamation plan is submitted  
20 to the State Mine Inspector for review.

21 (e) (1) The State Mine Inspector shall have 30 days from the  
22 date of receipt of a complete reclamation plan or complete plan  
23 amendments and financial assurances submitted pursuant to  
24 subdivision (d) to prepare written comments, if the State Mine  
25 Inspector so chooses. The lead agency shall evaluate written  
26 comments received from the State Mine Inspector relating to the  
27 reclamation plan, plan amendments, or financial assurances within  
28 a reasonable amount of time.

29 (2) The lead agency shall prepare a written response to the State  
30 Mine Inspector's comments describing the disposition of the major  
31 issues raised by the State Mine Inspector's comments, and submit  
32 the lead agency's proposed response to the State Mine Inspector  
33 at least 30 days prior to approval of the reclamation plan, plan  
34 amendment, or financial assurances. The lead agency's response  
35 to the State Mine Inspector's comments shall describe whether the  
36 lead agency proposes to adopt the State Mine Inspector's comments  
37 to the reclamation plan, plan amendment, or financial assurances.  
38 If the lead agency does not propose to adopt the State Mine  
39 Inspector's comments, the lead agency shall specify, in detail, why  
40 the lead agency proposes not to adopt the comments. Copies of

1 any written comments received and responses prepared by the lead  
2 agency shall be forwarded to the operator. The lead agency shall  
3 also give the State Mine Inspector at least 30 days' notice of the  
4 time, place, and date of the hearing before the lead agency at which  
5 the reclamation plan, plan amendment, or financial assurances  
6 may be approved by the lead agency. If no hearing is required by  
7 this chapter, or by the local ordinance, or other state law, then the  
8 lead agency shall provide 30 days' notice to the State Mine  
9 Inspector that it intends to approve the reclamation plan, plan  
10 amendment, or financial assurances. If the State Mine Inspector  
11 is dissatisfied with the lead agency's approval, the State Mine  
12 Inspector may seek judicial review of that approval pursuant to  
13 Section 1094.5 of the Code of Civil Procedure within 30 days of  
14 notice of the lead agency's action. Lead agency approval of a  
15 reclamation plan, plan amendment, or financial assurances that is  
16 inconsistent with this chapter shall be cause for action under  
17 Section 2774.4, whether judicial review of the approval was  
18 obtained or not.

19 (3) (A) Prior to approving initial financial assurances for a  
20 reclamation plan or any amendments, pursuant to subdivision (a)  
21 of Section 2770, the State Mine Inspector shall have 45 days from  
22 the date of receipt of a complete reclamation plan or complete plan  
23 amendments submitted pursuant to subdivision (c) to prepare  
24 financial assurances for reclamation pursuant to the proposed  
25 reclamation plan and to submit the proposed financial assurances  
26 to the lead agency for review.

27 (B) The lead agency shall have 30 days from the date of its  
28 receipt of the financial assurances to evaluate the financial  
29 assurances prepared by the State Mine Inspector and to submit  
30 written comments, if the lead agency so chooses.

31 (C) The State Mine Inspector shall evaluate any written  
32 comments received from the lead agency pursuant to subparagraph  
33 (B) and shall prepare a written response to the lead agency's  
34 comments, describing the disposition of the major issues raised  
35 by the lead agency's comments. The response shall indicate  
36 whether the State Mine Inspector proposes to adopt the lead  
37 agency's comments or, if not, shall specify, in detail, why the State  
38 Mine Inspector does not propose to adopt the lead agency's  
39 comments. Copies of any written comments received and responses  
40 prepared by the State Mine Inspector shall be forwarded to the

1 operator. The State Mine Inspector shall submit the response and  
2 the approved financial assurances to the lead agency and to the  
3 operator within 30 days of receipt of the lead agency's comments.

4 (4) To the extent that there is a conflict between the comments  
5 of a trustee agency or a responsible agency that are based on the  
6 agency's statutory or regulatory authority and the comments of  
7 other commenting agencies that are received by the lead agency  
8 pursuant to Division 13 (commencing with Section 21000)  
9 regarding a reclamation plan or plan amendments, the lead agency  
10 shall consider only the comments of the trustee agency or  
11 responsible agency.

12 (e) A lead agency shall notify the State Mine Inspector of the  
13 filing of an application for a permit to conduct surface mining  
14 operations within 30 days of an application being filed with the  
15 lead agency. By July 1 of each year, the lead agency shall submit  
16 to the State Mine Inspector for each active or idle mining operation  
17 a copy of any permit or reclamation plan amendments, as  
18 applicable, or a statement that there have been no changes during  
19 the previous year. Failure to file with the State Mine Inspector the  
20 information required under this section shall be cause for action  
21 under Section 2774.4.

22 SEC. 16. Section 2774.1 of the Public Resources Code is  
23 amended to read:

24 2774.1. (a) Except as provided in subdivision (i) of Section  
25 2770, if the lead agency or the State Mine Inspector determines,  
26 based upon an annual inspection pursuant to Section 2774, or  
27 otherwise confirmed by an inspection of the mining operation, that  
28 a surface mining operation is not in compliance with this chapter,  
29 the lead agency or the State Mine Inspector shall notify the operator  
30 of that violation by personal service or certified mail. The notice  
31 of violation shall specify the remedial steps to be taken to correct  
32 any noncompliance identified in the notice, as well as a reasonable  
33 time for compliance of each instance of noncompliance if  
34 compliance cannot reasonably be attained within 30 days of the  
35 date of the notice. If a violation extends beyond 30 days after the  
36 date of the lead agency's or the State Mine Inspector's notification,  
37 unless the operator has accepted a scope of work and schedule,  
38 agreed to by the lead agency or the State Mine Inspector, for  
39 achieving compliance, the lead agency or the State Mine Inspector  
40 shall issue an order by personal service or certified mail requiring

1 the operator to comply with this chapter or, if the operator does  
2 not have an approved reclamation plan or financial assurances, to  
3 cease all further mining activities.

4 (b) An order issued under subdivision (a) shall not take effect  
5 until the operator has been provided a hearing before the lead  
6 agency for orders issued by the lead agency, or board for orders  
7 issued by the State Mine Inspector, concerning the alleged  
8 violation. An order issued under subdivision (a) shall specify which  
9 aspects of the surface mine's activities or operations are  
10 inconsistent with this chapter, shall specify a time for compliance  
11 that the lead agency or State Mine Inspector determines is  
12 reasonable, taking into account the seriousness of the violation  
13 and any good faith efforts to comply with applicable requirements,  
14 and shall set a date for the hearing, which shall not be sooner than  
15 30 days after the date of the order.

16 (c) Following the issuance of an order under subdivision (a),  
17 the lead agency or the State Mine Inspector shall be entitled to  
18 access to the mining operation to inspect the status of compliance  
19 with the order. Entitlement to access shall be without further notice  
20 than the order, and shall end only when the lead agency or the  
21 State Mine Inspector determines that compliance with the order  
22 has been attained or the order is reversed on appeal, whichever is  
23 sooner.

24 (d) An operator who violates or fails to comply with an order  
25 issued under subdivision (a) after the order's effective date, as  
26 provided in subdivision (b), or who fails to submit a report to the  
27 State Mine Inspector or lead agency as required by Section 2207,  
28 shall be subject to an order by the lead agency or the State Mine  
29 Inspector imposing an administrative penalty of not more than five  
30 thousand dollars (\$5,000) per day, assessed from the original date  
31 of noncompliance with this chapter or Section 2207. The penalty  
32 may be imposed administratively by the lead agency or the State  
33 Mine Inspector. In determining the amount of the administrative  
34 penalty, the lead agency or the State Mine Inspector shall take into  
35 consideration the nature, circumstances, extent, and gravity of the  
36 violation or violations, any prior history of violations, the degree  
37 of culpability, economic savings, if any, resulting from the  
38 violation, and any other matters justice may require. Orders setting  
39 administrative penalties shall become effective upon issuance of  
40 the order and payment shall be made to the lead agency or the

1 State Mine Inspector within 30 days, unless the operator petitions  
2 the legislative body of the lead agency, the board, or the superior  
3 court for review as provided in Section 2774.2. An order shall be  
4 served by personal service or by certified mail upon the operator.  
5 Penalties collected by the State Mine Inspector shall not be used  
6 for purposes other than to cover the reasonable costs incurred by  
7 ~~the~~ the board or the State Mine Inspector in implementing this  
8 chapter or Section 2207.

9 (e) If the lead agency or the State Mine Inspector determines  
10 that the surface mine is not in compliance with this chapter, so that  
11 the surface mine presents an imminent and substantial  
12 endangerment to the public health or the environment, the lead  
13 agency or the Attorney General, on behalf of the State Mine  
14 Inspector, may seek an order from a court of competent jurisdiction  
15 enjoining that operation.

16 (f) Upon a complaint by the department, the State Mine  
17 Inspector, or the board, the Attorney General may bring an action  
18 to recover administrative penalties under this section, and penalties  
19 under Section 2207, in any court of competent jurisdiction in this  
20 state against any person violating any provision of this chapter or  
21 Section 2207, or any regulation adopted pursuant to this chapter  
22 or Section 2207. The Attorney General may bring this action on  
23 his or her own initiative if, after examining the complaint and the  
24 evidence, he or she believes a violation has occurred. The Attorney  
25 General may also seek an order from a court of competent  
26 jurisdiction compelling the operator to comply with this chapter  
27 and Section 2207 and to cease operation until compliance is proven.

28 (g) (1) The lead agency has primary responsibility for enforcing  
29 this chapter and Section 2207. In cases where the board is not the  
30 lead agency pursuant to Section 2774.4, or in cases where the State  
31 Mine Inspector has not assumed authority for mine inspections  
32 and determining financial assurance amounts pursuant to Section  
33 2774.4, enforcement actions may be initiated by the State Mine  
34 Inspector pursuant to this section only after the violation has come  
35 to the attention of the State Mine Inspector and either of the  
36 following occurs:

37 (A) The lead agency has been notified by the State Mine  
38 Inspector in writing of the violation for at least 30 days, and has  
39 not taken appropriate enforcement action, which may include

1 failing to issue an order to comply within a reasonable time after  
2 issuing a notice of violation.

3 (B) The State Mine Inspector determines that there is a violation  
4 that amounts to an imminent and substantial endangerment to the  
5 public health or safety, or to the environment.

6 (2) ~~Where~~ *If* the board or the State Mine Inspector is the lead  
7 agency pursuant to Section 2774.4, the board or the State Mine  
8 Inspector, as the case may be, has sole responsibility for enforcing  
9 this chapter and Section 2207.

10 (h) Remedies under this section are in addition to, and do not  
11 supersede or limit, any and all other remedies, civil or criminal.

12 SEC. 17. Section 2774.3 of the Public Resources Code is  
13 amended to read:

14 2774.3. The board shall review lead agency ordinances that  
15 establish permit and reclamation procedures, and any proposed  
16 changes thereto, to determine whether each ordinance or proposed  
17 change is in accordance with state policy, and shall certify the  
18 ordinance or proposed change as being in accordance with state  
19 policy if it adequately meets, or imposes requirements more  
20 stringent than, the California surface mining and reclamation  
21 policies and procedures established by the board pursuant to this  
22 chapter. Proposed changes to lead agency ordinances shall not be  
23 effective until certified by the board pursuant to this section.

24 SEC. 18. Section 2774.4 of the Public Resources Code is  
25 amended to read:

26 2774.4. (a) If the board finds that a lead agency either has (1)  
27 approved reclamation plans or financial assurances that are not  
28 consistent with this chapter, (2) failed to inspect or cause the  
29 inspection of surface mining operations as required by this chapter,  
30 (3) failed to seek forfeiture of financial assurances and to carry  
31 out reclamation of surface mining operations as required by this  
32 chapter, (4) failed to take appropriate enforcement actions as  
33 required by this chapter, (5) intentionally misrepresented the results  
34 of inspections required under this chapter, or (6) failed to submit  
35 information to the department as required by this chapter, including  
36 annually certifying to the board all of the following: (A) that the  
37 lead agency has approved an adequate reclamation plan and  
38 financial assurances, including any amendments thereto, for each  
39 mining operation in its jurisdiction, (B) that its mineral resources  
40 management plan complies with applicable law and has been

1 adopted in accordance with Section 2762, and (C) that all notices  
2 required pursuant to Section 2772.7 have been recorded, the board  
3 shall assign to the State Mine Inspector the authority to exercise  
4 any of the powers of that agency under this chapter, except for  
5 permitting authority.

6 (b) Until January 1, 2016, in cases where the board has assumed  
7 authority to exercise the powers of the lead agency under this  
8 chapter, except for permitting authority, the board shall continue  
9 to do so. Thereafter, the board shall assign those powers to the  
10 State Mine Inspector.

11 (c) If, no sooner than three years after the board has taken action  
12 pursuant to subdivision (a), the board finds, after a public hearing,  
13 that a lead agency has corrected its deficiencies in implementing  
14 and enforcing this chapter, and the rules and regulations adopted  
15 pursuant to this chapter, the board shall restore to the lead agency  
16 the powers assumed by the State Mine Inspector pursuant to  
17 subdivision (a).

18 (d) Before taking any action pursuant to subdivision (a), the  
19 board shall first notify the lead agency of the identified  
20 deficiencies, and allow the lead agency 45 days to correct the  
21 deficiencies to the satisfaction of the board. If the lead agency has  
22 not corrected the deficiencies to the satisfaction of the board within  
23 the 45-day period, the board shall hold a public hearing within the  
24 lead agency's area of jurisdiction, upon a 45-day written notice  
25 given to the public in at least one newspaper of general circulation  
26 within the city or county, and directly mailed to the lead agency  
27 and to all surface mining operators within the lead agency's  
28 jurisdiction who have submitted reports as required by Section  
29 2207.

30 (e) Affected surface mining operators and interested persons  
31 have the right, at the public hearing, to present oral and written  
32 evidence on the matter being considered. The board may, at the  
33 public hearing, place reasonable limits on the right of affected  
34 surface mining operators and interested persons to question and  
35 solicit testimony.

36 (f) If, after conducting the public hearing required by subdivision  
37 (d), the board decides to take action pursuant to subdivision (a),  
38 the board shall, based on the record of the public hearing, adopt  
39 written findings which explain all of the following:

40 (1) The action to be taken by the board.

1 (2) Why the board decided to take the action.

2 (3) Why the action is authorized by, and meets the requirements  
3 of, subdivision (a).

4 In addition, the findings shall address the significant issues  
5 raised, or written evidence presented, by affected surface mining  
6 operators, interested persons, or the lead agency. The transcript of  
7 testimony and exhibits, together with all papers and requests filed  
8 in the proceedings, shall constitute the exclusive record for decision  
9 by the board.

10 (g) The lead agency, any affected surface mining operator, or  
11 any interested person who has presented oral or written evidence  
12 at the public hearing before the board pursuant to subdivision (e)  
13 may obtain review of the board's action taken pursuant to  
14 subdivision (a) by filing in the superior court a petition for writ of  
15 mandate within 30 days following the issuance of the board's  
16 decision. Section 1094.5 of the Code of Civil Procedure governs  
17 judicial proceedings pursuant to this subdivision, except that in  
18 every case the court shall exercise its independent judgment. If a  
19 petition for a writ of mandate is not filed within the time limits set  
20 by this subdivision, the board's action under subdivision (a) shall  
21 not be subject to review by any court or agency.

22 (h) (1) A lead agency may unilaterally and voluntarily relinquish  
23 any or all of its responsibilities under this chapter, and the State  
24 Mine Inspector shall assume those responsibilities.

25 (2) (A) No sooner than three years after relinquishing its lead  
26 agency responsibilities, the lead agency may request the board to  
27 authorize it to resume its role as a lead agency.

28 (B) If the board finds, after holding a public hearing as described  
29 in subdivision (e), that the lead agency has corrected all  
30 deficiencies, if any, pursuant to subdivision (a) in implementing  
31 and enforcing this chapter and its implementing regulations, the  
32 board shall restore to the agency the lead agency powers assumed  
33 by the State Mine Inspector pursuant to this subdivision.

34 SEC. 19. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 a local agency or school district has the authority to levy service  
37 charges, fees, or assessments sufficient to pay for the program or



- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

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